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FCC Mail Room



TRIBAL HISTORIC PRESERVATION OFFICE

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RE: Tribal Consultation Section 106 procedures using the TCNS for PTC-related projects

Geoffrey C. Blackwell
Chief
Office of Native Affairs and Policy
Consumer and Governmental Affairs Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Dear Mr. Blackwell,

I would first like to say thank you, and please extend our thanks to your office, for organizing the meeting last week in Tulsa. It was very informative and I think will help us navigate the arduous journey we have before us. After the Tribal caucus we issued an informal document that included a list of items, including the potential use of a quota system for the railroads (henceforth in this document to be called Roads) to follow when using FCC's TCNS. I was the one that came up with the idea and explained how I envisioned it would work during the closed meeting with other tribal representatives. However, it was never fully explained to the FCC or the Roads. After the meeting, you asked me to provide the record with an official document explaining the proposal to establish a quota system.

Each Road must first determine an internal deadline (day of the month, 2014) to complete tribal consultation. Each of the individual Roads would then supply in table format for each Federally-recognized Tribe an identifying number, type (wayside pole or base station) and coordinate location for every tower (existing or proposed) within the self-identified geographic extent provided to the FCC. Each tribe should (and in our case, will most definitely) verify the information with the FCC, which should have required the Roads to disclose this information prior to issuing a license to broadcast. It will be expected that this precise level of detail is established before proceeding with Section 106 compliance.

First, please recall that it is the opinion of tribes represented at the Tulsa meeting that all individual wayside poles and base stations will be reviewed on a site-by-site basis; there will be no exclusions or batching. Once the total number of projects within an established geographic extent for a given tribe is verified that total is divided by the number of business days remaining before the internal deadline. Each tribe knows the volume of Section 106 review it has, as well as the number of employees it has to review those projects on a daily basis. Given the quota (projects per day) each tribe will be able to determine additional staff required. The cost of hiring temporary staff to meet the internal deadlines will be absorbed by the Roads. Tribes will agree to meet deadlines only after the appropriate level of support personnel is made available. Roads will have to negotiate with tribes regarding terms of compensation for finding, hiring, and training each additional temporary support person needed, which would vary depending on the size of the office reviewing the projects, the further out the internal deadline can be set, and the fewer number of projects there are to be reviewed within a given tribe's territory.

For example, let's say that BNSF and the Osage Nation agree that there are twelve hundred (1,200) projects in Osage territory that BNSF would like to have reviewed by June 4th, 2014; from the date of this letter, the timeframe is one hundred and twenty (120) available work days. Calculating the BNSF/Osage quota (1200/120) results in ten (10) PTC projects per day. The Osage Nation Historic Preservation Office (ONHPO) has an average number of all Section 106 projects, including TCNS notifications for cell towers and other Federal agencies (Corps of Engineers, FHWA/DOT, etc.), reviewed in a given day; hypothetically, let's say that figure is thirty (30) per day. If there are three (3) ONHPO reviewers, each reviewing approximately ten (10) projects per day, in this scenario, BNSF would provide financial resources for the Osage Nation to hire one (1) temporary support person and would agree to enter into TCNS no more than ten (10) projects within Osage territory per day between today (given that the additional support person was hired and trained before today) and June 4th, 2014. The burden of figuring out the complexities of ordering projects for TCNS input such that they don't violate quotas will have to fall on the FCC, as TCNS is a proprietary system.

In conclusion, please note that the process described above does not directly address the issue of existing PTC towers. As you know, the fact that nearly 10,000 projects have moved forward without tribal consultation is a big problem. It was suggested at the Tulsa meeting that no new projects should be reviewed until mitigation for previous construction is complete. Without tribe-by-tribe programmatic mitigation, it seems unlikely that the Roads will meet the mandated deadline of 2015. The initial part of the process described on the previous page, that is identifying the location and type of all existing and proposed towers, will be necessary for ascertaining potential adverse effects of previous construction on properties eligible for listing in the National Register of Historic Places (NRHP), as well as sacred sites and Traditional Cultural Properties (TCP); and, will be paramount to moving forward in good faith to resolve the issue. Thank you again for your time and effort, and please convey our gratitude to your staff for all their hard work.

Best regards,



Dr. Barker Fariss

Senior Archaeologist

Osage Nation Historic Preservation Office